

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODNEY JAMAAR SMITH,
Plaintiff,
v.
INSURER OF CDC, et al.,
Defendants.

No. 1:20-cv-01196-DAD-BAM

ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION

(Doc. No. 16.)

Plaintiff Rodney Jamaar Smith is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This matter is before the court on plaintiff's "Motion to Oppose Judgment of the Court to Dismiss Action after Adopting Findings and Recommendations," which the court will construe as a motion for reconsideration of the court's October 20, 2020 order dismissing this action due to plaintiff's failure to state a cognizable claim for relief. (Doc. No. 16.) For the reasons set forth below, the court will deny plaintiff's motion for reconsideration.

On October 20, 2020, the undersigned adopted the findings and recommendations issued by the assigned magistrate judge (Doc. No. 12) and dismissed this action due to plaintiff's failure to state a cognizable claim for relief. (Doc. No. 14.) Judgment was entered on October 20, 2020.

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1 (Doc. No. 15.) On November 2, 2020, plaintiff filed the pending motion for reconsideration.

2 (Doc. No. 16.)

3 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
4 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
5 on grounds of: “(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
6 evidence . . . ; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has
7 been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment.”

8 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
9 event “not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.*

10 Reconsideration of a prior order is an extraordinary remedy “to be used sparingly in the
11 interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Estate of*
12 *Bishop*, 229 F. 3d 877, 890 (9th Cir. 2000) (citation omitted); *see also Harvest v. Castro*, 531
13 F.3d 737, 749 (9th Cir. 2008) (addressing reconsideration under Rule 60(b)). In seeking
14 reconsideration under Rule 60, the moving party “must demonstrate both injury and
15 circumstances beyond his control.” *Harvest*, 531 F.3d at 749 (internal quotation marks and
16 citation omitted).

17 “A motion for reconsideration should not be granted, absent highly unusual
18 circumstances, unless the district court is presented with newly discovered evidence, committed
19 clear error, or if there is an intervening change in the controlling law,” and it “may *not* be used to
20 raise arguments or present evidence for the first time when they could reasonably have been
21 raised earlier in the litigation.” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
22 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations omitted) (emphasis in
23 original). Further, Local Rule 230(j) requires, in relevant part, that a movant show “what new or
24 different facts or circumstances are claimed to exist which did not exist or were not shown”
25 previously, “what other grounds exist for the motion,” and “why the facts or circumstances were
26 not shown” at the time the substance of the order which is objected to was considered.

27 Here, plaintiff’s motion does not identify any basis under Rule 60(b) for this court to
28 reconsider its finding that plaintiff failed to state a cognizable claim for relief under applicable

1 law. Instead, plaintiff asserts that he attempted to state a cognizable claim by filing a first
2 amended complaint, but that “the court dismissed this amendment and rejected the amending of
3 petitioner’s original claim, as moot, and unnecessary.” (Doc. No. 16 at 2.) Plaintiff is mistaken
4 in this regard. The magistrate judge denied plaintiff’s motion for leave to amend his complaint as
5 moot because plaintiff had already filed his first amended complaint, as permitted by the court’s
6 screening order addressing plaintiff’s original complaint. (*See* Doc. Nos. 6, 10.) The magistrate
7 judge then screened plaintiff’s first amended complaint, found that plaintiff again had failed to
8 state a cognizable claim for relief, and issued findings and recommendations recommending that
9 this action be dismissed. (Doc. No. 12.) Plaintiff did not file objections to those findings and
10 recommendations. Thereafter, the undersigned issued an order adopting those findings and
11 recommendations and dismissing this action. (Doc. No. 14.) Plaintiff’s assertion that the court
12 should reconsider its dismissal order based on consideration of the allegations of his first
13 amended complaint is unavailing because the court has already considered plaintiff’s first
14 amended complaint and determined that plaintiff failed to state a cognizable claim therein.
15 Plaintiff simply provides no basis under Rule 60(b) to support reconsideration of the court’s order
16 dismissing his action due to his failure to state a cognizable claim.

17 Accordingly,

- 18 1. Plaintiff’s motion for reconsideration (Doc. No. 16) is denied;
- 19 2. This case shall remain closed; and
- 20 3. No further filings will be entertained in this closed case

21 IT IS SO ORDERED.

22 Dated: **November 6, 2020**

23 
UNITED STATES DISTRICT JUDGE